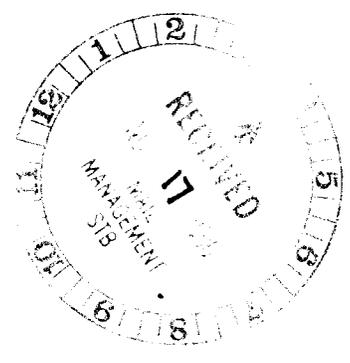


200438

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Ex Parte No. 582 (Sub-No. 1)
MAJOR RAIL CONSOLIDATION PROCEDURES

COMMENTS OF THE
CITY OF OWATONNA, MN

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Due: November 17, 2000

ORIGINAL

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I. INTRODUCTION

By decision served October 3, 2000, the Board initiated this Notice of Proposed Rulemaking (NPRM) proceeding. If adopted, the proposed rules would represent the first major revision of the Board's Railroad Consolidation Rules, 49 CFR Part 1180 et seq. since they were last changed as a result of the 1980 Staggers Rail Act amendments to the former Interstate Commerce Act. The NPRM sets November 17, 2000, as the deadline for initial comments by interested parties, with reply and rebuttal comments due December 18, 2000, and January 11, 2001, respectively. The NPRM indicates that the Board will issue its revised final regulations on June 11, 2001.

The City of Owatonna ("Owatonna") submits these initial comments in response to the Board's request.

II. BACKGROUND

Owatonna is a city and political subdivision established under Minnesota law. About 70 miles south of the Twin Cities and 70 miles west of the Mississippi River in southeastern Minnesota, Owatonna has a population of 20,577. Owatonna is located along U.S. Interstate Highway I-35W and U.S.

Highway 14.

Three freight railroads, the Dakota, Minnesota & Eastern Railroad Corporation ("DM&E"), I&M RailLink, L.L.C. ("IMRL"), and the Union Pacific Railroad Company ("UP"), presently serve Owatonna. DM&E, an east-west class II carrier formed in 1986 from secondary lines of the former Chicago And Northwestern Transportation Company ("CNW") presently operates from Winona (on the west bank of the Mississippi River) through Owatonna westward into South Dakota. DM&E has a pending application at the Board for permission to build a 262 mile extension into Wyoming's Powder River Basin.¹ While the Board has previously found that the public convenience and necessity require construction of that extension, the Board has yet to complete its environmental permitting process.² IMRL is another class II regional carrier, established in 1997 from rail lines formerly owned by CP Rail. Owatonna is located on a secondary IMRL line between Austin and Faribault. The DM&E and IMRL lines presently cross (but do not connect) at grade in downtown Owatonna. Finally, UP owns and operates a north-south mainline on the west side of the City -- the former Rock Island

¹ Docketed as FD No. 33407, Dakota, Minnesota & Eastern Railroad Corporation, Construction in the Powder River Basin.

² The Board made its public convenience and necessity findings in a decision served December 10, 1998. On September 27, 2000, the Board served a draft environmental impact statement. The Board is presently holding on line environmental hearings and comments on the draft EIS are due January 5, 2001. Owatonna is participating in the environmental permitting proceeding.

Railroad's "Spine Line" between Minneapolis and Kansas City which UP acquired in 1993 as part of its acquisition of control of the CNW.

Owatonna's interest in this proceeding stems from its participation in the DM&E construction case. The specific problem is that the Powder River extension would transform DM&E from a grain hauling regional carrier with a modest traffic base and modest frequency levels (presently 3 trains daily through Owatonna) into a virtual coal hauling conveyer built (expected to handle 37 trains per day) through the heart of the City. Moreover, DM&E projects that as many as 10 of these trains will turn at Owatonna to move northwards onto IMRL. Because UP still owns (and leases to DM&E) a small segment of the DM&E's line through Owatonna and refuses to let DM&E build a downtown connection to IMRL, DM&E proposes to build a connection to IMRL on the DM&E owned portion of the line inside the city limits (known as Alternate O-4 or the "Inner Loop"). In view of the numerous adverse effects of the Inner Loop on street and pedestrian traffic, public safety, property values, emergency vehicle access, environmental considerations, and the quality of life generally, Owatonna has preferred an in town connection (known as Alternative O-5 or the diamond connection). DM&E and the City have attempted to reach a compromise and have signed a document known as the "Community Partnership Agreement" which is binding on the railroad as long as the City desires to abide by its terms but allows the City to cancel it at anytime. Under

that agreement the City has dropped the southern bypass proposal in exchange for DM&E pursuing the direct downtown connection between DM&E and IMRL on the UP owned property. Construction of that connection would require UP's consent which DM&E has been unable so far to obtain. Should the City cancel the agreement for any reason including relief from the Board, DM&E is relieved of its obligations under the agreement.

III. OWATONNA'S COMMENTS

Owatonna's experiences as a party in the environmental phase of the DM&E construction proceeding has led it to file comments here. Like rail construction cases, changes in traffic flows and operations associated with railroad mergers can have very serious environmental and community impacts as discussed below.

Owatonna believes that the Board's well intended proposal would substantially raise the bar which merger applicants must pass to obtain approval without making it any easier for affected parties to obtain relief from the adverse effects of an approved transaction. But rather than raise so substantially the standard for future mergers, Owatonna would like to see the Board scrutinize applicants' proposals more carefully using hearings, including on site hearings, chaired by objective fact finders to gather and analyze the evidence presented. In addition, Owatonna would have the Board clarify and simplify the standards for adversely affected parties to obtain relief. While Owatonna commends the Board on its greater

emphasis on post-consummation remedies, it recommends serious attention be given to a phased in consummation of any major rail merger, with each new step to be implemented after previous ones have been successful.

By now, the Board is well aware of the environmental and community impact issues involving railroad mergers. These issues initially surfaced with the Union Pacific-Southern Pacific merger and became an overriding concern with joint CSX Transportation/Norfolk Southern Corporation acquisition of Conrail ("the Conrail Acquisition Case"). Many of the same issues which Owatonna faces with the DM&E construction case -- noise and air pollution, vibration, traffic congestion at grade crossings, safety problems at grade crossings and along the right of way, emergency vehicle access, and adverse affects on neighborhoods and property values -- surfaced in these railroad consolidation proceedings.

In the DM&E construction case, DM&E had proposed to build a loop track inside the City's limits (Alternative O-4), in order to permit an interchange connection between DM&E and IMRL. Owatonna contends that this "Inner Loop" (Alternative O-4) will have numerous adverse affects. The O-4 Loop³ will encircle an expanding residential neighborhood and, more importantly, will cause the train to go through the center of the City twice with the attendant noise and air pollution, vibration, and safety

³ A map of the Owatonna rail line alternatives taken from the Executive Summary to the DM&E construction case is attached to this filing.

problems. The railroad congestion (resulting from a vast increase in the amount of rail traffic including interchange traffic) will tie up motor vehicle traffic at grade crossings thereby exacerbating highway congestion. Grade crossing blockages would create a series of "iron triangles" dividing up the City socially, economically, and functionally. Because the neighborhoods through which rail lines run tend to be blighted, the impact usually falls more heavily on disadvantaged people resulting in what has come to be called "environmental justice." These neighborhoods have more crime and social problems, lower property values, and correspondingly lower tax revenues. Moreover, blockages at grade crossings make it more difficult for police and fire to respond to emergencies.

As the Board is now well aware from the Conrail Acquisition Case, the City's fears are not based upon idle speculation. Many of the same problems were predicted by cities affected by the Conrail case and came to pass when that transaction was consummated. For example, the City of Fostoria (OH) is criss crossed by rail lines owned by CSX Transportation and Norfolk Southern Railroad. Changes in traffic patterns caused by their acquisition of assets and operations of Conrail have tied up rail traffic where their respective lines cross. The resulting rail congestion, in turn, caused trains to back up at highway/railroad crossings resulting in traffic delays, potential highway accidents and pollution, and the inability of police and fire departments to respond promptly to emergencies.

Another environmental and social impact issue common to both mergers and rail construction cases involves mitigation efforts and who should pay for those efforts. Mitigation can range from less expensive measures to costly grade separations and prohibitively expensive bypass routes and new alignments. Many of these measures are beyond the financial capability of the online community. In the case of the DM&E construction, it is the railroad and its customers (distant electric utility companies which may be able to get cheaper transportation rates due to the added rail competition) which benefit from the railroad extension and improvement. Yet Owatonna is being asked to pay a price for that improvement either through adverse socio-economic impacts or through the Outer Loop bypass. Similarly, modest cities such as Owatonna have been forced to retain expensive, specialized engineering and legal counsel to make their views known at the Board. That is unfair considering that Owatonna reaps no benefit from the railroad project.

The Board's advocacy of voluntary agreements between parties as a way of resolving merger related problems is a thread which pervades the NPRM. The Board seems to treat negotiated agreements as a virtual panacea to merger related problems. Owatonna believes that voluntary arrangements are always preferable to government mandated solutions. However, the Board's apparent extensive reliance on voluntary arrangements seems to overlook the very basic fact that those parties most likely to reach a negotiated solution are those with equal

bargaining power.

In preparing these comments, Owatonna reviewed the March 31 decision initiating the Advance NPRM. It noted suggestions that the Board could use its power to condition a merger to eliminate various class I railroad anticompetitive practices such as so called "paper barriers." As Owatonna has noted above, DM&E's line crosses that of IMRL. It is physically possible to build a track connection between the two railroads which would permit traffic to move between these railroads, eliminating the need for the Inner Loop favored by DM&E and the Outer Loop favored by the City. The reason why DM&E cannot pursue this "in town" connection (Alternative O-5) is that the short piece of track which DM&E uses to traverse the City is owned by and leased from UP. UP's predecessor, CNW, had retained ownership of that trackage back in 1986 at the time of the CNW-DM&E sale to prevent DM&E from interchanging traffic there with CP Rail, IMRL's predecessor. DM&E has advised the City that it cannot build a connection to IMRL without UP's consent and that UP is unlikely to grant that consent. Any revision of the Board's merger regulations that would permit the Board to condition future railroad mergers or reopen past transactions eliminating such anticompetitive practices would be very beneficial to adversely affected parties such as the City of Owatonna. It could resolve a major point of contention between the City and the DM&E (involving the Inner Loop), allowing that construction to proceed.

Historically, the ICC and now the Board have granted relief to protestants in connection with two major economic issues, preservation of competition and protection of essential rail service. Fortunately, Owatonna is blessed with three potential rail competitors, UP, DM&E, and IMRL. In the past the ICC and the Board have acted to preserve the last vestige of rail competition ("2 to 1" competition) but not "3 to 2" competition. This superficial analysis may be appropriate for some markets but not Owatonna, because both DM&E and IMRL are fairly weak carriers and competitors. Should one or both fail, the level of competition in the Owatonna market would be measurably diminished. The loss of both carriers would have the potential to cut off Owatonna from CP Rail, Burlington Northern Santa Fe, and the Wisconsin Central Railroad. Similarly, should a merger divert sufficient traffic from one or both of these carriers affecting their viability, both competition and essential rail service could also be jeopardized. The simple fact of the matter is that the Board should scrutinize merger proposals more carefully than it has in the past when financially fragile class II and III railroads are involved and should lower the standard granting relief for class II and III railroads alleging loss of competition and essential rail service.

IV.

CONCLUSION

Owatonna agrees with the Board: it is time to scrap the old rules. But Owatonna sincerely hopes that as the Board crafts new rules, it pays attention to those citizens who are

unintentionally affected by its actions.

Respectfully submitted,



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Due: November 17, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 17th day of November, 2000, served a copy of the forgoing on all known parties of record by first class U.S. Mail postage prepaid.



John D. Heffner

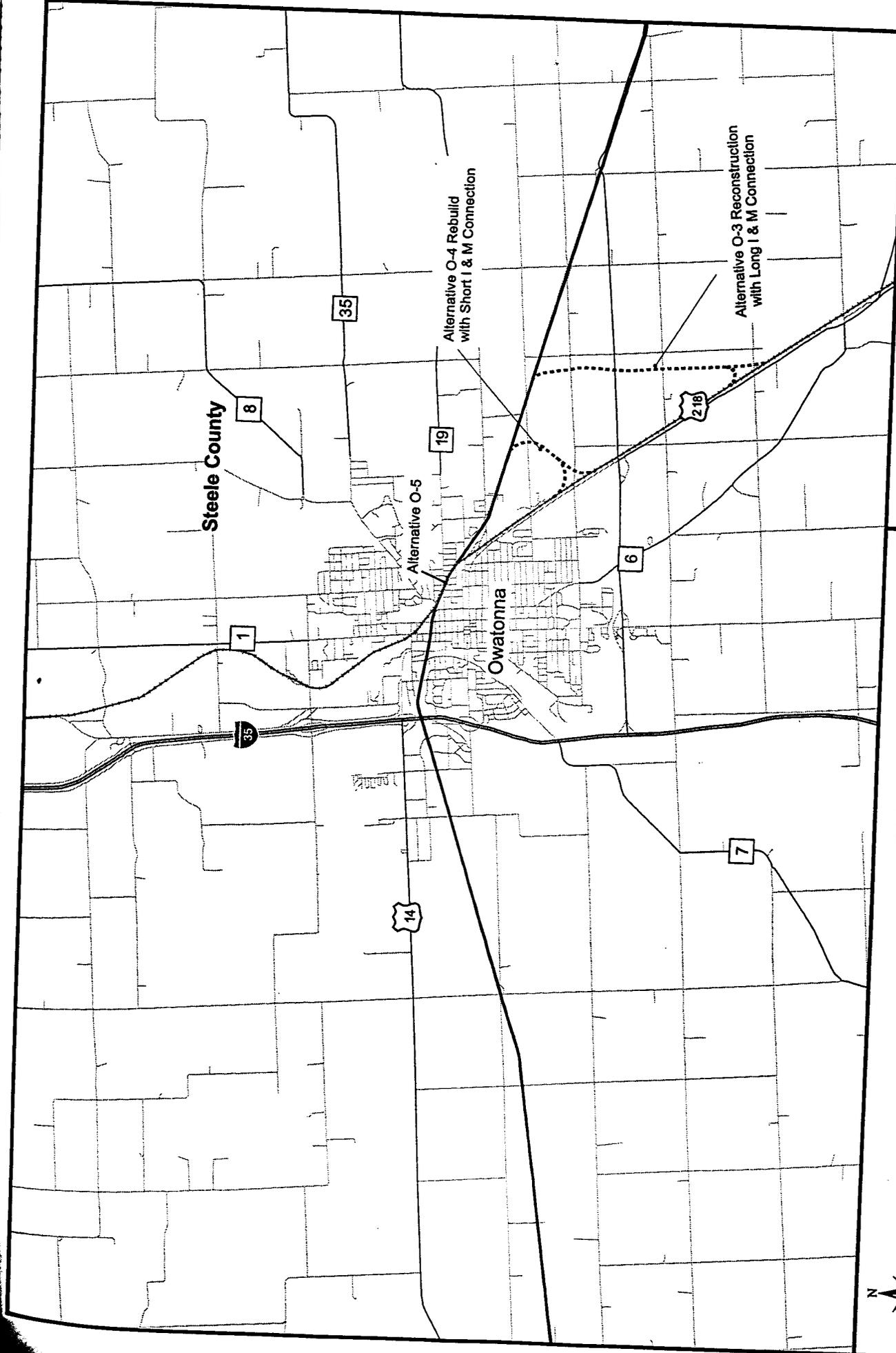


Figure ES-14
POWDER RIVER BASIN EXPANSION PROJECT
 Owatonna Alternatives
 Owatonna, Minnesota

Existing Rail Line Roads
 New Construction I&M Rail Link